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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Avenue, N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

H2

DATE: AUG 24 2012 OFFICE: BALTIMORE FILE: [redacted]

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h)

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Baltimore, Maryland, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Jamaica who entered the United States pursuant to a B2 visa on December 11, 1999. The applicant was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(II), for having committed a crime relating to a controlled substance. The applicant seeks a waiver of inadmissibility in order to remain in the United States with his U.S. citizen spouse.[1]

The District Director concluded that the record established the existence of extreme hardship for a qualifying relative, and denied the application accordingly.

On appeal, counsel for the applicant asserts that the applicant is eligible to apply for a waiver of inadmissibility based upon his possession of paraphernalia conviction. Counsel further asserts that the applicant provides childcare and emotional, psychological, and spiritual support to his spouse, a qualifying relative.

In support of the waiver application and appeal, the applicant submitted identity documents, court documents concerning his criminal conviction, a forensic evidence report, a letter from his spouse, and a transcript. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(2)(A) of the Act states, in pertinent part:

> (i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of –
>
> > (II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), is inadmissible

Section 212(h) of the Act provides, in pertinent part:

> (h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraphs (A)(i)(I), (B), (D), and (E) of subsection (a)(2)

[1] The applicant filed a Form I-290B appeal from the denial of his Form I-601 waiver on August 26, 2010. However, on the same Form I-290B, the applicant stated that he was filing a motion to reopen his Form I-485. The Form I-601 and Form I-485 are two separate applications that were denied in two separate decisions. The applicant cannot file an appeal of his I-601 and motion to reopen his I-485 in the same I-290B appeal. Further, the AAO does not have jurisdiction over the denial of the applicant's Form I-485. Accordingly, the AAO will address only the applicant's Form I-601 appeal in this decision.

> and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana if –
>
> > (1) (B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . . .

The record reflects that the applicant was convicted of a single offense of possession of paraphernalia in Fairfax County General District Court on August 1, 2007 and received a fine. The record reflects that the applicant was not convicted of possession of marijuana. The director found the applicant to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(II) for committing a crime related to a controlled substance.[2] The applicant does not dispute this ground of inadmissibility on appeal.

An alien who is inadmissible under section 212(a)(2)(A)(i)(II) of the Act based on a drug paraphernalia offense may qualify for a waiver of inadmissibility under section 212(h) of the Act if that offense relates to a single offense of simple possession of thirty grams or less of marijuana. *Matter of Espinoza*, 25 I&N Dec. 118 (BIA 2009). The BIA has determined that when drug paraphernalia is possessed for the sole purpose of introducing thirty grams or less of marijuana into the possessor's body, it relates to a section 212(h) offense. *Id.* At the time of the applicant's arrest, he was in possession of a plastic bag containing less than one gram of marijuana, one hand-rolled butt, and a pack of cigarette papers. As noted above, the record reflects that the applicant was convicted of only one offense, possession of drug paraphernalia, and not possession of marijuana as well. Accordingly, the applicant was convicted of a single offense, possession of drug paraphernalia, and it is related to simple possession. The applicant is eligible to apply for a section 212(h) waiver of inadmissibility.

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez,* the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative

[2] It is noted that although the director's denial of the applicant's Form I-601 is based upon the applicant's failure to demonstrate extreme hardship to a qualifying relative, the director's denial of the applicant's Form I-485 is based upon the erroneous conclusion that the applicant is ineligible to apply for a Form I-601 waiver.

would relocate. *Id.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. *See generally Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear that "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator "must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." *Id.*

The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. *See, e.g.*, *Matter of Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *See Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *but see Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

The record reflects that the applicant is a 30-year-old native and citizen of Jamaica. The applicant's spouse is a 28-year-old native and citizen of the United States. The applicant is currently residing with his spouse and their child in Temple Hill, Maryland.

Counsel for the applicant asserts that the applicant's marriage and family balance would be undermined if he were separated from his spouse. Counsel further asserts that the applicant provides emotional, psychological, and spiritual support to his spouse. The applicant's spouse asserts that she loves the applicant and that their family would experience psychological damage if they were separated from each other. It is noted that the record does not contain any medical documentation concerning the psychological state of the applicant's spouse or her son. It is acknowledged that separation from a spouse or parent nearly always creates a level of hardship for both parties. However, there is no indication that the emotional hardship suffered by the applicant's spouse would be so serious that she would be unable to continue with her employment or care for their child.

The applicant's spouse states that she is the sole provider of financial support for her family, but the applicant is the main caretaker for their child during the day. The applicant's spouse asserts that she has always lived within twenty miles of most members of her extended family. There is no information concerning the extent to which the applicant's spouse's family member would assist in childcare if the applicant returned to Jamaica. There is also no indication that the applicant's spouse would be unable to find an alternate means of childcare for her child, if necessary. In the aggregate, there is insufficient evidence in the record to find that the applicant's spouse would suffer a level of hardship beyond the common results of inadmissibility or removal upon separation from the applicant.

The applicant's spouse contends that relocating to Jamaica to reside with the applicant is not a viable option in her life. The applicant's spouse states that she is financially able to provide her family with a comfortable life in the United States, but would be unable to find comparable employment in Jamaica. It is noted that the record does not contain any evidence concerning country conditions in Jamaica. Further, the applicant's spouse states that the applicant is not able to find employment in the United States because he does not have the proper documentation. However, there is no information concerning the applicant's previous employment in Jamaica and there is no indication that the applicant would be unable to secure employment upon his return. There is also no information concerning the extent to which the applicant's family members in Jamaica would assist in his family's relocation. Going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Further, courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, it is not enough by itself to justify an extreme hardship determination. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship). The record contains insufficient evidence to find that the applicant's spouse would suffer hardship beyond the common consequences of inadmissibility or removal if she relocated to Jamaica.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8

U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.